

April 29, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L02P0012**
Proposed Ordinance No. **2004-0143**

PETRO VISTA
Preliminary Plat Application

Location: Approximately on the southeast corner of the intersection of
118th Avenue Southeast and Southeast Petrovitsky Road

Applicant: Leroy Surveyors & Engineers Inc., *represented by*
Paul Green
Leroy Surveyors & Engineers, Inc.
1103 Shaw Road
Puyallup, Washington 98372
Telephone: (253) 848-6608

King County: Department of Development and Environmental Services, *represented by*
Fereshteh Dehkordi
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7173
Facsimile: (206) 296-6613

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Approve, subject to conditions
Approve, subject to conditions
Approve, subject to conditions

EXAMINER PROCEEDINGS:

Hearing Opened: April 27, 2004
Hearing Closed: April 27, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**1. General Information:**

Owner/Developer: Dale VanDerschelden
21308 Snag Island Drive East
Sumner, WA 98390
(253) 891-1442

Consulting Engineer: LeRoy Surveyors & Engineers, Inc.
1103 Shaw Road
Puyallup, WA 98372
(253) 848-6608

STR: NW ¼ 33-23-05

Location: Approximately, Southeast corner of the intersection of 118th Avenue SE and SE Petrovitsky Road

Zoning: R-6-SO
Acreage: 3.83 acres
Number of Lots: 23
Density: 6 du/acre
Lot Size: 3,450 square feet average
Proposed Use: Detached and attached residential dwellings
Sewage Disposal: Soos Creek Water & Sewer District
Water Supply: Soos Creek Water & Sewer District
Fire District: King County Fire District 40
School District: Renton School District

Complete Application Date: September 16, 2002

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the April 27, 2004 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions. The SEPA MDNS condition as described within the staff report should be corrected so that the word "derbies" reads "debris".

3. Dale VanDerschelden has filed a preliminary plat application to subdivide 3.83 acres into 23 lots for single-family residential development. Many of the small R-6 zoned lots will be constructed with attached residential structures. The property is within a rapidly urbanizing area located south of Petrovitsky Road about 1 mile east of its intersection with the Benson Highway.
4. The major complications with respect to this plat application relate to wetland issues. The tract B onsite wetland functions as a closed depression and overflows Petrovitsky Road to its north during major storm events. As a consequence, most site drainage will be rerouted to a detention tract located directly to the wetland's east, with the wetland itself only receiving a reduced flow sufficient to maintain its hydrology. Since the wetland will no longer be allowed to overflow, existing problems relating to drainage backup on properties to the south should also be resolved.
5. An offsite wetland to the east and its outlet stream have been identified by DDES staff as part of the Soos Creek headwaters system and assigned a class 1 wetland rating and a class 2 S stream category respectively. Accordingly, the eastern flank of the Petro Vista plat will be constrained by sensitive areas buffers. Moreover, DDES has determined that the offsite stream is in hydraulic continuity with a downstream bog, and the plat will be required to provide enhanced water quality treatment of site runoff.
6. Students from Petro Vista will talk to Renton School District schools, including Benson Elementary located at 116th Avenue Southeast and Southeast 186th Street. There are no shoulders or sidewalks along 118th Avenue Southeast south of the plat, but the roadway only carries a moderate amount of traffic. An alternative route further west via Petrovitsky Road and 116th Avenue Southeast provides better walking facilities but is characterized by more traffic. In view of the small size of the plat in the context of an area-wide lack of walking facilities, it is not appropriate to require the Applicant to cure this neighborhood deficiency.

CONCLUSIONS:

1. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
2. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The preliminary plat application for Petro Vista, as revised and received on February 26, 2004, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.

3. The plat shall comply with the base density (and minimum density) requirements of the R-6-SO zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The Applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - d. Storm water facilities shall be designed using the KCRTS Level One Flow Control standard. Water quality facilities shall also be provided using the Sphagnum bog protection menu. As shown on the conceptual drainage plan, the outlet of the detention pond and water quality facility will connect to the existing conveyance system along Petrovitsky Road and small areas of undetained flows will be used to maintain wetland hydrology within Tract B. Based upon the final drainage analysis, the size of the proposed drainage tracts may have to increase to accommodate the required detention storage volumes and water quality facilities. All runoff control facilities shall be located in a separate tract and dedicated to King County, unless portions of the drainage tract are used for recreation space in accordance with KCC 21A.14.180.

- e. The final drainage analysis shall evaluate the requirements for off-site bypass as outlined in the drainage manual on page 1-36. As noted in the design criteria, the contribution of flows to an onsite wetland must be maintained and the natural attenuation of flows under pre-developed conditions must also remain. The design engineer shall evaluate all areas which may contribute offsite flows including the ditch along 118th Avenue SE. As noted in the applicants Level One Offsite analysis dated May 15, 2003, during major storm events the onsite wetland fills up and overtops to Petrovitsky Road and also backs up water across the south property line. The design engineer shall evaluate any potential flooding issues and provide drainage designs which adequately prevent potential drainage problems. As shown on the preliminary plat, an interceptor swale is proposed along the south property line of lots 10 and 11.
 - f. The final drainage plans and technical reports shall evaluate all applicable design criteria for onsite closed depressions and ponding areas as discussed in the drainage manual on page 3-54. The existing wetland in Tract B currently captures surface water from offsite areas and the western portion of the project area which may influence the storm water modeling for pre- and post-developed flow rates and volumes. During final engineering review, King County will review and determine how much offsite flow and/or undetained project areas may drain to the wetland in Tract B without pretreatment in detention or water quality facilities.
 - g. The final engineering plans and recorded plat shall show the 100-year floodplain boundaries as required by Special Requirements No. 2 in the drainage manual.
8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
- a. Southeast 176th Court shall be improved as an urban subaccess street.
 - b. One hundred eighteen (118th) Avenue Southeast shall be improved as an urban neighborhood collector along the frontage of the subject property. As noted in KCRS 2.03, for neighborhood collector streets intersecting with an arterial (SE Petrovitsky), the width must be 36-feet wide for the first 150 feet. A 25-foot right-of-way line radius is also required as shown in KCRS 2.10.
 - c. One hundred eighteen (118th) Avenue SE is designated a neighborhood collector street which may require designs for bus zones and turn outs. As specified in KCRS 2.16, the applicant or his engineering consultant shall contact Metro and the local school district to determine specific requirements.
 - d. Street illumination shall be provided at intersections with arterials in accordance with KCRS 5.05.
 - f. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
9. During preliminary site inspections, King County has identified fill material, building debris, and a concrete foundation within the site. To address the required site grading and designs for development, the applicant shall submit a geotechnical report with the engineering plans to address all applicable earthwork, site preparation, road construction, and utility installation. The

geotechnical engineer shall also evaluate the soil conditions and requirements for the proposed storm water vault located within Tract A. Structural plans and calculations for the vault must be prepared by a licensed structural engineer.

10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. King County Code 16.82.150D requires seasonal limitations for construction within the Soos Creek basin. During the period October 1 through March 31, clearing and grading is not allowed unless certain provisions are complied with as outlined in the code. The applicants engineering plans shall demonstrate compliance with the applicable code requirements and provide notes referencing the seasonal limitations set forth in KCC 16.82.150D.
12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
13. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
14. There shall be no direct vehicular access to or from 118th Avenue SE from those lots which abut it, except lot 23. A note to this effect shall appear on the engineering plans and final plat.
15. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.

Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

- a. The Class 1 wetland near the east property line shall have a minimum buffer of 100 feet, measured from the wetland edge.
- b. The Class 2 wetland near the north boundary of the site shall have a minimum buffer of 50 feet, measured from the wetland edge.

- c. The Class 2S stream shall have a minimum 100-foot buffer, measured from the ordinary high water mark (OHWM).
- d. The stream, wetlands and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- e. A minimum building setback line of 15 feet shall be required from the edge of the tract.
- f. Buffer width averaging may be allowed by King County if it will provide additional protection to the wetland/stream or enhance their functions, as long as the total area contained in the buffer on the development proposal site does not decrease. In no area shall the buffer be less than 65 percent of the required minimum distance. To ensure such functions are enhanced a mitigation plan will be required for the remaining on-site sensitive areas. An enhancement plan shall be submitted for review during engineering review.
- g. A mitigation plan and financial guarantee/bond will be required for any proposed impacts of sensitive areas including buffers. The bond amount will include all components of the mitigation plan including, but not limited to, plantings, grading, fencing, signs, inspections, and monitoring for five years.
- h. Prior to commencing construction activities on the site, the applicant shall temporarily mark sensitive areas Tract(s) in a highly visible manner, and these areas must remain so marked until all development proposal activities in the vicinity of the sensitive areas are completed.
- i. Prior to approval of construction activities on the site, the boundary between the sensitive area Tract(s) and adjacent land shall be identified using permanent signs. Sign specifications shall be shown on the engineering plans and shall be installed every 50 feet or as deemed appropriate by county staff at the time of engineering review.
- j. During engineering plat review the applicant shall provide a wetland hydrology analysis to demonstrate how the wetland hydrology will be maintained post-construction.
- k. Detention out-fall structures may be permitted within the wetland/stream buffers, however, structures shall be located in the outer edge of the buffer, if possible. All buffer impacts shall be mitigated.
- l. Development authorized by this approval may require other state and/or federal permits or approvals. It is the applicant's responsibility to correspond with these agencies prior to beginning work on the site.
- m. The following have been established under SEPA authority as necessary requirements to mitigate the adverse environmental impacts of this development. The Applicant shall demonstrate compliance with these items prior to final approval.
 - 1) A four-foot tall fence shall be constructed along the edge of the Sensitive Area Tracts B and C. The fence shall follow the common boundaries of the wetland tracts and the adjoining lots and road. Fencing details, construction and location shall be shown on

the engineering plans for DDES review and approval. This mitigation is intended to reduce disturbance within the protective buffer and associated wetland.

- 2) All existing structures and other debris shall be removed from the sensitive area tracts and the area shall be restored in accordance with KCC 21A.24.

- n. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. The proposal is to combine the recreation and drainage tracts. A suitable recreation space shall be provided within the combined tract consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, and general improvements and landscaping. The approved engineering plans shall be consistent with the overall conceptual plan.
 - b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, and KCC 21A.16 (landscaping code) as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.

17. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tracts.
18. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if 118th Avenue SE is on a bus route. If it is a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
 - i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
19. To implement KCC 21A.38.230 requiring retention of significant trees, the applicant shall show on the engineering plans that the significant trees retained within the sensitive area tract equal 25% or more of all the significant trees on the site. DDES Site Development Specialist shall inspect and verify this prior to the engineering plan approval and any site preparation work.

ORDERED this 29th day of April, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 29th day of April, 2004, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before May 13, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before May 20, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE APRIL 27, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L02P0012.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi and Pete Dye, representing the Department; Paul Green, representing the Applicant, and Jeffrey Manipon.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L02P0012.
- Exhibit No. 2 Department of Development and Environmental Services Preliminary report, dated April 27, 2004.
- Exhibit No. 3 Application dated June 17, 2002.
- Exhibit No. 4 Environmental Checklist dated December 19, 2002.
- Exhibit No. 5 Mitigated Declaration of Non-significance dated March 15, 2004.
- Exhibit No. 6 Affidavit of Posting indicating October 2, 2002 as date of posting and DDES receipt on October 4, 2002
- Exhibit No. 7 Revised site plan dated February 26, 2004.
- Exhibit No. 8 Assessors maps NW ¼ section of 33-23-5 & SW ¼ section of 28-23-05.
- Exhibit No. 9 Level One Downstream Drainage Analysis by Paul Green dated September 13, 2002.
- Exhibit No. 10 Revised Level One Off-site Drainage Analysis by Barghausen dated May 15, 2003.
- Exhibit No. 11 Traffic Impact Analysis by TPE Inc. dated January 14, 2003.
- Exhibit No. 12 Wetland Analysis Report by Wiltermood Associates, Inc. dated September 20, 1999.
- Exhibit No. 13 Petrovitsky Off-site Wetland Report by LeRoy Surveyors & Engineers dated January 5, 2000.
- Exhibit No. 14 Adjacent Owners - Orthophotograph
- Exhibit No. 15 Color Photograph of Bog Area

SLS:gao
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